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SUPREME COURT, U.S.

(4)

No. 07-259

In the Supreme Court of the United States

VLADIMIR IOURI AND VERA YURIY,

Petitioners,

v.

MICHAEL B. MUKASEY, ATTORNEY GENERAL

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONERS' SUPPLEMENTAL BRIEF

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Dada v. *Mukasey*,
No. 06-1181, 554 U.S. __ (June 16, 2008) ...*passim*

PETITIONERS' SUPPLEMENTAL BRIEF

This Court recently decided *Dada* v. *Mukasey*, No. 06-1181, 554 U.S. __ (June 16, 2008). Although *Dada* did not address the precise issue presented here, the opinion nonetheless casts further doubt on the resolution of this case by the court of appeals. Moreover, in *Dada*, this Court specifically reserved an issue raised by this case—whether the courts of appeals have authority to stay voluntary departure pending appellate review. Accordingly, certiorari should be granted to consider this matter on the merits. In the alternative, and at the very least, the Court should grant the petition, vacate the decision below, and remand the case for further consideration in light of *Dada*, so that the court below has an opportunity to reconsider the matter in light of this Court's decision.

The petition for certiorari in this case presents the question whether a motion to stay deportation necessarily includes a motion to stay voluntary departure. Pet. i. The court of appeals here held that it does not and therefore affirmed the BIA's decision to deny petitioners' request to reopen the removal proceedings against them, reasoning that petitioners could not obtain relief because they had overstayed their voluntary departure period. *Id.* at 6-8. If the motion to reopen had been granted, petitioners would have automatically obtained legal status in the United States because their immediate relative petitions *were already approved* by the agency. In so deciding this case, the court below agreed with two other circuits. *Id.* at 10-11. But three courts of appeals disagree, and would have provided relief to the petitioners. *Id.* at 11-13.

Dada supports petitioners' argument that the court of appeals wrongly decided this question.

First, in holding that the "[b]enefits to the alien from voluntary departure are evident" (*Dada*, slip op. at 8), the Court's analysis confirms petitioners' argument that a reasonable alien—assisted by effective counsel—would *never* voluntarily forego a stay of voluntary departure when pursuing an appeal from the BIA to the circuit court, unless he or she was required to do so in order to pursue a motion to reopen (Pet. 21-23). *Dada*, therefore, casts further doubt on the Second Circuit's holding. That is especially so because, as the Court noted, "[i]t is foreseeable, and quite likely, that the time allowed for voluntary departure will expire long before the BIA issues a decision on a timely filed motion to reopen. * * * These practical limitations must be taken into account." *Dada*, slip op. at 14.

In addition to calling into question the holding below, *Dada* suggests additional reasons why the Court might wish to grant review in this case. *Dada* noted the frequency with which voluntary departure is granted, highlighting the significance of the question presented here. Slip. op. at 14. To the extent that a substantial number of individuals granted voluntary departure will petition for further review before the courts of appeals, the question presented will continue to recur frequently until definitively resolved by this Court. Moreover, as we explain in the petition (Pet. 4, 11 n.3), this case implicates a conflict in the circuits—specifically noted in *Dada*, at slip op. 8—on whether the courts of appeals have *any* authority to stay voluntary departure during the pendency of an appeal from the BIA. The Court declared in *Dada* that it would "leave * * * resolution" of this issue "for another day." *Ibid.* A grant of review in this case would present the Court with an opportunity to resolve that disagreement.

For these reasons and those presented in the petition, the petition for a writ of certiorari should be granted. In the alternative, the petition should be granted, the judgment below vacated, and the case remanded for further proceedings consistent with this Court's decision in *Dada*.

Respectfully submitted.

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